

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MARJORIE FERRELL, <i>et al.</i> ,)	
)	
Plaintiff,)	No. C-1-01-447
)	Hon. Sandra S. Beckwith
v.)	
)	
WYETH-AYERST LABORATORIES, INC.)	
and AMERICAN HOME PRODUCTS CORP.,)	
)	
Defendants.)	

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOTION TO STAY

The motion to stay filed by Marilyn Deyo should be denied. First, Ms. Deyo should not be permitted to intervene, for the reasons set forth in *Plaintiffs' Opposition to Motion to Intervene*, filed herewith. Second, the motion to stay should be denied even if Ms. Deyo were permitted to intervene. As Plaintiffs explain in their opposition to the intervention motion, Ms. Deyo seeks to assert a legal argument under the Vermont Consumer Fraud Act that no court has ever accepted and that Judge Motz rejected in *In re Microsoft Corp. Antitrust Litig.*, 216 F. Supp. 2d 366 (D. Md. 2003). If Ms. Deyo wishes to pursue such a risky course on her own behalf, she may do so in her Vermont action. This action, however, should not be stayed while Ms. Deyo follows that course of action. This case is three years old. Plaintiffs have survived a motion to dismiss, and a class has been certified on a cause of action that is beneficial to Vermont end-payors. This case should not be set aside while Ms. Deyo, who did not file her complaint until last month, pursues her invalid legal theories. In short, Ms. Deyo has not given this Court the slightest basis "to justify abandoning the 'virtually unflagging obligation of the federal courts to exercise the jurisdiction given them.'" *PaineWebber, Inc. v. Cohen*, 276 F.3d 197, 209 (6th Cir. 2001) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817

(1976)). This Court can fully protect the interests of Vermont end-payors and should not defer to a recently-filed action that rests on an untenable legal theory already rejected by another district court.

Dated: January 20, 2005

Respectfully submitted,

\Craig R. Spiegel\
One of Plaintiffs' attorneys

Janet G. Abaray
LOPEZ, HODES, RESTAINO,
MILMAN, SIKIOS & POLOS
312 Walnut Street, Suite 2090
Cincinnati, Ohio 45202
Tel: (513) 852-5600

Joseph E. Conley, Jr.
BUECHEL & CONLEY
25 Crestview Hills Mall Road
Suite 104
Crestview Hills, Ky. 41017
Tel: (859) 578-6600

Co-Liaison Counsel for End-Payor Plaintiffs

Kenneth A. Wexler
Jennifer Fountain Connolly
THE WEXLER FIRM LLP
One North LaSalle, Suite 2000
Chicago, Illinois 60602
(312) 346-2222

Marc H. Edelson
HOFFMAN & EDELSON
45 West Court Street
Doylestown, Pennsylvania 18901
(215) 230-8043

Alan I. Gilbert
Barbara J. Felt
Susan E. MacMenamin
HEINS MILLS & OLSON, P.C.
3550 IDS Center, 80 South Eighth Street
Minneapolis, MN 55402
(612) 338-4605

Patrick E. Cafferty
MILLER FAUCHER and CAFFERTY LLP
101 N. Main Street, Suite 450
Ann Arbor, MI 48104
(734) 769-2144

Steve W. Berman
Craig Spiegel
HAGENS BERMAN LLP
1301 5th Avenue, Suite 2900
Seattle, WA 98101

Co-Lead Counsel for End-Payor Plaintiffs